

### **Remarks**

Claims 1-29 were pending. Claims 7, 8 and 21 have been amended. New claims 30-33 have been added. Claims 1-6, 14-20 and 22-29, drawn to non-elected inventions, have been cancelled without prejudice.

Claims 7, 8 and 21 were amended to further clarify the claimed invention. Support for the amendments to claims 7, 8 and 21 and for new claims 30-33 can be found throughout the application as filed.

No new matter has been added.

Upon entry of this paper, claims 7-13, 21 and 30-33 will be pending.

### **Restriction Requirement**

Claims 1-29, all the pending claims, are subject to a restriction requirement. The Office requires Applicants to elect one of seven allegedly patentably distinct inventions for examination. Applicants respectfully traverse on the grounds that searching more than one of the groups set forth by the Office would pose no serious burden on the Office.

MPEP §803 sets forth criteria for determining when restriction is proper, stating, *inter alia*, that “[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” Applicants respectfully assert that searching more than group, in particular, Groups II/III and III/IV, would not constitute a serious burden.<sup>1</sup> Applicants note that Groups II/III and IV/V require analysis of levels of nucleotide sequences comprising SEQ ID NO:23702. Accordingly, search results for each of the groups would be highly relevant to the other. Applicants further note that each of Groups II-V is classified in class 436.

Although Applicants respectfully traverse the restriction requirement on the grounds that examining more than one invention would not constitute a serious burden, Applicants elect herein “Group II, Claims [7], 8-9, 11-13, and 21, drawn to a nucleic acid-based method of detecting a cancerous cell or the tumor burden of a subject, classified in class 435, subclass 6”.

---

<sup>1</sup> It is noted that Groups II and III are linked by claim 7, and Groups IV and V are linked by claim 22.

It is believed that new claims 30-33 are also encompassed by elected Group II. Applicants further elect for examination SEQ ID NO:23702.

Notwithstanding the foregoing, however, Applicants respectfully request that Groups IV/V also be examined along with Groups II/III. Including both Groups I and III in the present application would have the affect of minimizing the administrative burden on the Office of searching and examining closely related Groups in separate applications.

Applicants reserve the right to prosecute the claims encompassed by any of the non-elected groups in future divisional applications.

Applicant : Williams, et al.  
Serial No. : 10/779,543  
Filed : February 12, 2004  
Page : 7 of 7

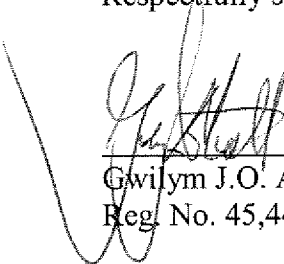
Attorney's Docket No.: PP021302.0001/ 20366-130001

### CONCLUSION

The foregoing represents a *bona fide* attempt to advance the present application to allowance. Applicants respectfully assert that all claims are in condition for allowance, which action is hereby requested. The Examiner is invited to telephone the undersigned attorney at (302) 778-8458 if such would expedite prosecution.

No fee is believed due. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,



Gwilym J.O. Attwell  
Reg. No. 45,449

Date: February 2, 2007

Fish & Richardson P.C.  
P.O. Box 1022  
Minneapolis, MN 55440-1022  
(302) 652-5070 telephone  
(877) 769-7945 facsimile